IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 170 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JIVUBA KESHUBHA AND OTHERS
Versus
SHASHIKANT GOVINDJI TRIVEDI AND OTHERS

MR SATYEN B RAWAL for the petitioners

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 09/12/2005

ORAL JUDGMENT

There has to be a limit to everything, more so to the dishonesty. In this matter, dishonesty is overflowing from every word of it.

2. This Civil Revision Application is filed by the heirs and legal representatives of deceased Keshubha Samatsinh being aggrieved of the judgment and decree passed in Regular Civil Appeal No.1 of 1995 by the learned District Judge, Surendranagar dated 14.02.2005.

3. The learned District Judge was hearing the appeal on the matter being remanded by order dated 10.07.1998 in Civil Revision Application No.862 of 1997. Before considering the judgment impugned in this Civil Revision Application, few facts are necessary. The present respondents **poor, unfortunate landlords** filed Civil Suit No.2 of 1981 long 24 years before praying for decree of eviction on the ground of non payment of rent.

Mr.Raval, the learned advocate appearing for the petitioners, who has the onerous duty of advancing the cause of dishonesty, made available a copy of the plaint of the said Civil Suit No.2 of 1981, which is taken on record. The plaint shows that the suit was filed against the widow of deceased, Keshubha Samatsinh, who died in the year 1976 (14.12.1976) as defendant No.2. Defendant no.2 was the son of deceased Keshubha, who was major on the date of filing of the suit. Defendant no.3 was Manubha Keshubha, another son of the deceased tenant, who

was major on the date of filing of the suit. There were three other defendants who were minors and they were represented by mother**-natural guardian of the minors.**

4. It is extensively discussed by the learned District Judge that the mother being in charge of the affairs of the Family in her wisdom there being no adverse interest between her and her minor children, compromised the suit. The compromise as visible from the plaint of Civil Suit No.103 of 1987 was to the effect that on the defendants making payment of arrears of rent the plaintiffs were to give up their prayer for decree of eviction. By any standard, no reasonable man would come to the conclusion that the compromise in any way, even remotely, was against the interest of the minors adversely affecting their rights. The decree passed on the basis of aforesaid compromise is contended to be not binding to the defendants on all possible technical and super-technical pleadings.

5. In the year 1987 all the defendants of Civil Suit No.2 of 1981 along with two married daughters of deceased Keshubha Samatsinh filed Civil Suit No.103 of 1987, a copy of the plaint made available for perusal is taken on record. It is contended that the decree passed

on the basis of the compromise in Civil Suit No.2 of 1981, is not binding to them (plaintiffs of Civil Suit No.103 of 1987); that the decree dated 18.09.1982 is illegal, void, unjust, atrocious and beyond the jurisdiction of the Court. Therefore, the same is not executable. A declaration was sought to that effect. The main plank of argument was that some of the defendants were minors when a compromise was entered into, that the provisions of Order XXXII, more particularly Rule 3 of the Code of Civil Procedure were not complied with and hence, the decree is nullity and is not binding to the plaintiffs. This Civil Suit No.103 of 1987 was dismissed.

The learned Judge of the trial Court after considering in detail the submissions made on behalf of the plaintiffs, dismissed the suit by judgment and order dated 30.11.1994. Against that the plaintiffs preferred Regular Civil Appeal No.1 of 1995 which came to be dismissed by the appellate Court by judgment and order dated 11.04.1997. Against that Civil Revision Application No.862 of 1997 was filed. The learned Judge of this Court was pleased to partially allow the same and remanded the matter directing the first appellate Court to give specific finding on the following points.

(i)Whether there was any material in Suit No.2

of 1981 to come to the conclusion that the minors defendants no.2 and 3 agreed with their mother to treat her to be the only heir of their deceased father and sole tenant?

(ii) Whether the defendants no.2 and 3 were minors when Suit No.2/81 was instituted and it was decided in terms of compromise?

(iii) Whether non compliance of Order 32, Rule 3 CPC has rendered the compromise decree not binding against the minor defendants 2 and 3 of suit No.2 of 1981?

(iv) Whether the compromise decree in absence of permission from the Court that the compromise was for the benefit of the minors and for their interest is legal, and binding on the minor defendants no.2 and 3?”

It is required to be noted that this Revision Application was heard in absence of respondents therein (original landlords). In absence of the respondents, it was only on the basis of the assistance rendered by the learned advocate for the petitioners, the Court passed the order wherein defendants no.2 and 3 are referred as minors. In fact, defendant Nos.2 and 3 were not minors as is clear from the plaint of Civil Suit No.2 of 1981. It was only

defendants Nos.4, 5 and 6 were minors and they were represented through their mother - natural guardian.

6. It is was the mother, who had compromised the suit and had made the plaintiffs to give up their prayer for eviction decree. This Court is not able to understand and appreciate the contention raised by the petitioners (plaintiffs of Civil Suit No.103 of 1987) that a mother acting on her own behalf and also of the minors acted contrary to law and compromised the suit. By what stretch of imagination can it be said that the compromise was against the interest of minors. It is this type of dishonest people who bring disfame to the law and generate unsympathetic attitude of the courts. Such persons are not only to be condemned, but whenever a question of grant discretionary relief arises, the same is to be denied and party is to be saddled with heavy cost so as to see that such people are discouraged.

The learned District Judge has dealt with all submissions made on behalf of the present petitioners. The learned District Judge has answered all the points which were referred to by order dated 10.07.1998.

7. At one stage Mr.Raval, the learned advocate

appearing for the petitioners submitted that even under section 5(11)(C) of the Bombay rent Act, the Court could not have held the mother as the sole tenant. Without being mind put of the fact that two of her sons were major at the time of filing Civil Suit No.2 of 1981 and that the mother was managing the affairs of the Family and was making the payment of rent. A provision of law is not meant to promote dishonesty. Submissions of Mr.Raval having found without any substance, the same are rejected.

8. So far as impugned judgment is concerned, the learned District Judge has considered the matter in detail. The learned District Judge has discussed various points in para 13 onwards. The learned District Judge has taken all pains. He has made threadbare discussion of all the points in light of the provisions of law and various decisions. The learned Judge is right in observing in para 16 that,

> “Jivuba Keshubha appeared on behalf of herself as well as in capacity of legal guardian of all the 3 minors, **Going through the copy of the compromise submitted by the parties in Civil Suit NO.2/81, it becomes very clear that Jivuba Keshubha herself has put her signature and also in capacity of legal**

guardian of defendants no.4 to 6 of that suit, ..

..” (emphasis supplied)

9. The learned Judge has observed in para 18 that,

“ .. .. Insignificant lapses or trivial defects would not ordinarily entitle the minor to avoid the decree. It means the negligence of the guardian must be so serious or of such a character as to justify the inference that the minor's interest were not at all protected and in substance though not in form, the minor went in unrepresented at the trial. At this stage, I would like to refer a case of Smt. Lilaben Ramniklal Vs. Vithaldas Tulsidas, reported in 1980 GLH 951, wherein it is held by the Hon. Gujarat High Court that **when in a suit against minor defendants, no application for appointment of guardian for those minors was made, and no such appointment order was made though it can be considered as a sheer formal or technical lacuna, which does not vitiate the solemn judgment and decree**. In that case plaintiffs had filed a suit for recovery of money by the sale of mortgaged property and the said suit

was decreed against the defendants including minors without obtaining order of Cort to appoint a guardian, but in that case mother of the minors had engaged an advocate for herself and subsequently also for her minor children. She also filed written statement on their behalf. Thus, there was no anything which could be challenged by the minors. In appeal, it was contended that the decree against the minor defendants was nullity. In that case, the Hon. High Court held in the facts and circumstances of the case that **it was a sheer formal or technical lacuna which did not vitiate the impugned judgment and decree. Here in the appeal before this Cort, the same issue has arisen and hence this citation would become fully applicable.** Moreover, going through the record of the case, it appears that no dispute is taken by the plaintiffs that the compromise was not made for the benefit of the minors and it was not in their interest. .. .." (emphasis supplied)

10. This Court is at pains to record that this Civil Revision Application is filed only with a view to while

away time which is apparent from the following dates. The present Civil Revision Application is filed against order dated 14.02.2005. The Revision Application is filed on 28.02.2005. It was taken up for hearing for the first time only on 27.10.2005. On that day also the learned advocate for the petitioners sought time and he was granted time upto 21.11.2005. Again on 21.11.2005 the matter was adjourned for today. Today also, the learned advocate for the petitioners started saying that he wants some time to produce certain papers to assist the Hon'ble Court in adjudicating the matter. It was only when the Court did not grant that request, the learned advocate proceeded with the arguments. The learned advocate tried his best to see that the matter is delayed as far as possible. In view of the discussion hereinabove, this Civil Revision Application is dismissed with exemplary cost of Rs.15,000/- (Rupees fifteen thousand only).

(RAVI R. TRIPATHI, J.)

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